

9, 10, 11, 15, 16, 18, 20, 23 and 31

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 268/2010 and CRL.M.A. 7171-7172/2010**
CRL.REV.P. 269/2010 and CRL.M.A. 7174/2010
CRL.REV.P. 270/2010 and CRL.M.A. 7176/2010
CRL.REV.P. 274/2010 and CRL.M.A. 7186/2010
CRL.REV.P. 275/2010 and CRL.M.A. 7188/2010
CRL.REV.P. 277/2010 and CRL.M.A. 7192/2010
CRL.REV.P. 279/2010 and CRL.M.A. 7198/2010
CRL.REV.P. 282/2010 and CRL.M.A. 7204/2010
CRL.REV.P. 290/2010 and CRL.M.A. 7221/2010

Decided on 14.03.2011

IN THE MATTER OF :

G.E. CAPITAL TRANSPORTATION FINANCIAL SERVICES LTD.

..... Petitioner

Through: Mr. Vinay Kumar Shailendra, Advocate

versus

DEEPAK BHAVANJI THAKKAR	Respondent in CRL.RP 268/2010
TAHIR HUSSAIN	Respondent in CRL.RP 269/2010
JVM LOGISTICS AND ORS.	Respondent in CRL.RP 270/2010
KISHAN PAL TYAGI	Respondent in CRL.RP 274/2010
DEEPAK BHAVANJI THAKKAR	Respondent in CRL.RP 275/2010
AKRAM CHOUDHARI	Respondent in CRL.RP 277/2010
RAJKUMAR MATHURAPRASAD SINGHAL	Respondent in CRL.RP 279/2010
PURI RAM	 Respondent in CRL.RP 282/2010
RAJASHI RAMADEBHAI KAMBARIYA	Respondent in CRL.RP 290/2010

Through: None.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petitions are disposed of by this common order and judgment as the impugned judgment is common in all these cases and the

question involved is also common. For the sake of convenience, only the facts of CRL.REV.P. 268/2010 are referred to.

2. The present petition is filed by the petitioner under Section 397 read with Section 401 Cr.P.C. read with Section 482 Cr.P.C. praying *inter alia* for quashing of the order dated 30.3.2010 passed by the learned Metropolitan Magistrate, whereunder the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (in short '**the Act**') was dismissed by the trial court on the ground of lack of territorial jurisdiction vested in Delhi courts to entertain and try the complaint.

3. Vide order dated 30.3.2010, the learned Metropolitan Magistrate returned the complaint of the petitioner for presentation of the same before the court having territorial jurisdiction, on the ground that there was nothing in the complaint or the documents annexed, which showed that any of the acts constituting the offence under Section 138 of the Act had taken place in New Delhi, except for the presentation of cheque for encashment and issuance of legal notice. The learned Metropolitan Magistrate rejected the argument of the complainant that the fact that the complainant-company has its registered office in Delhi or the cheque in question was presented at a service branch of the Drawee Bank situated at Delhi, would confer territorial jurisdiction on the courts at Delhi. In the impugned order, it was observed that in the present case, the cheque for encashment was issued by a drawee bank located outside the territorial jurisdiction of Delhi and hence, the complaint was not maintainable in Delhi merely because of issuance of legal notice from Delhi.

4. Learned counsel for the petitioner submits that the impugned order of the learned Metropolitan Magistrate dated 30.3.2010 is erroneous, inasmuch as the court below failed to consider the fact that in the case of K. Bhaskaran vs. Sankaran Vaidhyan Balan & Anr., reported as **(1999) 7 SCC 510**, it was held by the Supreme Court that the following acts were the necessary components for the offence under Section 138 of the Act to be constituted :

- (i) drawing of the cheque,
- (ii) presentation of the cheque to the bank,
- (iii) returning the cheque unpaid by the drawee bank,
- (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount and,
- (v) failure of the drawer to make payment within 15 days of the receipt of the notice.

It is urged that the aforesaid decision had made it clear that it was not necessary that all the above five acts ought to have been perpetrated at the same locality and it is possible that each of those five acts could have occurred at five different localities and that any one of the courts exercising jurisdiction in those five local areas could then have become the place of trial for the offence under Section 138 of the Act.

5. Learned counsel for the petitioner further submits that reliance placed by the court below in the case of M/s Harman Electronics (P) Ltd. vs. M/s National Panasonic India Ltd., **156 (2009) DLT 160 (SC)** is misplaced, as in the aforesaid decision, it was particularly noticed that the complaint was completely silent on the fact whether the cheques were presented at Chandigarh or not. It is stated that in the aforesaid case, as the parties

were carrying on business at Chandigarh, the transactions took place at Chandigarh, the cheques were issued at Chandigarh, the Supreme Court had observed that it had no option but to presume that the cheques were also presented at Chandigarh and dishonour of the cheques took place at Chandigarh, hence mere sending of a demand notice from Delhi would not vest jurisdiction on Delhi courts to take cognizance under the Act. It is the contention of the counsel for the petitioner that unlike the facts in the case of M/s Harman Electronics (supra), in the present case, mere issuance of a legal notice by the petitioner/complainant from Delhi alone does not confer territorial jurisdiction on Delhi courts, rather the aforesaid act combined with the act of presentation of cheque for encashment and dishonor of the cheque would confer such jurisdiction. He submits that the petitioner has filed an additional affidavit, wherein it is stated that the loan agreement was executed at New Delhi and that the loan was disbursed to the respondent from the account of the petitioner from New Delhi.

6. Counsel for the petitioner further states that the cheques in question issued by the respondent were payable at par at all branches of the drawee bank because of the core banking system adopted by banks in the country, thus entitling an outstation cheque to be paid at par at all the branches of a drawee bank in any part of the country. He submits that the cheques in question were presented at the bank of the petitioner at New Delhi for encashment, through the clearance house of the Reserve Bank of India, and were dishonoured by the bank of the respondent at New Delhi and returned unpaid to the petitioner through its bank at New Delhi with the remarks "insufficient funds". Hence, it is canvassed that contrary to the

finding of the court below, territorial jurisdiction would vest in the courts at Delhi.

7. It was also brought to the notice of this court that a Division Bench of this Court in the case of Delhi High Court Legal Services Committee vs. Govt. of NCT of Delhi, decided on 23.09.2009 in WP (C.) 11011/2009, had directed the return of all those complaints where courts had taken cognizance without actually having territorial jurisdiction. Learned counsel for the petitioner states that the Supreme Court in SLP(C) No.29044/2009 entitled Vijay Kumar Shailendra vs. Delhi High Court Legal Services Committee and Anr filed against the aforesaid order, had directed *status quo* to be maintained until further orders. He states that while the present complaints were filed in May 2009, the *status quo* order was passed by the Supreme Court on 3.11.2009 and in view of the said order, the complaints ought not to have been returned by the court below, particularly when the aforesaid interim order was pointed out to the court below.

8. The question of territorial jurisdiction vesting in the Courts in Delhi, in the context of complaints filed under Section 138 of the Act came up for consideration before this Court in a batch of matters, lead matter being M/s Religare Finvest Ltd. vs. State & Anr. Crl.Rev.P.No.179/2009, reported as **173(2010) DLT 185**. In the aforesaid case, after examining a number of judgments cited by both sides on the issue of territorial jurisdiction including K. Bhaskaran vs. Sankaran Vaidhyan Balan and Anr. reported as **(1999) 7 SCC 510**; Trisuns Chemical Industry vs. Rajesh Agarwal and Ors. reported as **(1999) 8 SCC 686**; Shri Ishar Alloy Steels Ltd. vs. Jayaswals NECO Ltd. reported as **2001 (3) SCC 609**; Lok Housing

and Constructions Limited vs. Raghupati Leasing and Finance Limited and Anr. reported as **100 (2002) DLT 38**; Mosaraf Hossain Khan vs. Bhagheeratha Engg. Ltd. reported as **(2006) 3 SCC 658**; Smt. Shamshad Begum vs. B. Mohammed reported as **2008 (13) SCALE 669**; Rajiv Modi vs. Sanjay Jain reported as **V (2009) SLT 725**; ICICI Bank Ltd. vs. Subhas Chand Bansal reported as **160 (2009) DLT 379**; Achintya Mandal vs. Chaitanya Agro Products & Ors. reported as **2009 (108) DRJ 471**; M/s Harman Electronics Pvt. Ltd. vs. M/s National Panasonic India Ltd. reported as **2009 II AD SC 21**; Religare Finvest Limited vs. Sambath Kumar A reported as **(2010) JCC (NI) 266** and Patiala Casting P. Ltd. & Ors. vs. Bhushan Steel Ltd. reported as **2010 IV AD (CRL)(DHC) 266**, this Court had held as below:-

"15. As regards the submission of the counsel for the respondent that territorial jurisdiction vests in a Court in whose jurisdiction, the major portion of the cause of action arises, i.e., the locality where the bank of the accused which has dishonoured the cheque is situated, the Supreme Court has clarified in the case of K. Bhaskaran (supra), that the locality where the bank of the accused, which has dishonoured the cheque, is situated cannot be regarded as the sole criteria to determine the place of offence and that a place, for the purpose of invoking the provisions of Section 138 of the Act, would depend on a variety of facts. Pertinently, the term used by the Supreme Court in the aforesaid case for completing the offence under Section 138 of the Act is "acts" and not "cause of action". The said position emerges clearly from a bare reading of paras 11, 14 and 16 of the aforesaid judgment reproduced hereinabove. Therefore, this Court is not inclined to agree with the submission of the counsel for the respondent that the major portion of the cause of action in the present case arose only after the cheque issued by the respondent/accused was forwarded by the banker of the petitioner/complainant to the banker of the accused, and where, on presentation, the cheque was dishonoured, which in the present case, is situated not in Delhi, but in Pune.

16. It is clear from the provision itself that an offence under Section 138 would not be completed with the dishonour of the cheque. Rather, it attains completion only with the failure of the drawer to pay the cheque amount within the expiry of the fifteen days after the legal notice is served upon the drawer of the cheque/s whose cheque/s have been dishonoured. As noted above, the offence under Section 138 of the Act can be completed only with the concatenation of a number of acts, the acts being, drawing of the cheque, presentation of the cheque with the bank, returning of the cheque unpaid by the drawee bank, giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and failure of the drawer to make payment within 15 days of the receipt of the notice. It is not essential that all the acts should be committed at the same locality. It is quite possible that all the five acts are perpetrated in five different localities. In such a situation, any one of the courts exercising jurisdiction in one of the five localities can become the place of trial for the offence under Section 138 of the Act. At the stage of entertaining a complaint under Section 138 of the Act, the Court is only required to arrive at a prima facie opinion as to the territorial jurisdiction, on the basis of the averments made therein, without launching into a fact finding mission as to their correctness or otherwise.

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25. From the aforesaid facts and circumstances, there appears no ambiguity on the aspect of the right of the petitioner/complainant to file a complaint in a Court having jurisdiction in the context of the five acts mentioned in the case of K. Bhaskaran (supra). In the present case, as noted above, a substantial part of the cause of action for filing of the complaint by the petitioner/company against the respondent/accused under Section 138 of the Act, prima facie appears to have arisen within the jurisdiction of the courts in Delhi. However, it is clarified that if after taking cognizance, the respondent/accused is able to place such material facts on the record which demonstrate that the Courts in Delhi do not have the territorial jurisdiction to entertain the complaint, the learned Metropolitan Magistrate shall still have a free hand to ascertain the truth of the allegations made by the petitioner/complainant and arrive at a different conclusion."

9. On a plain reading of the principles laid down in the aforesaid cases, it is clear that the two acts of presentation of the cheque and issuance of legal notice from Delhi, constitute two of the five acts contemplated by K. Bhaskaran vs. Sankaran Vaidhyan Balan & Anr. (supra). Further, the petitioner/complainant claims that the loan agreement was executed at Delhi and the loan was disbursed to the respondent, from the account of the petitioner, from New Delhi. Hence this court is inclined to agree with the petitioner that on a prima facie view, territorial jurisdiction would vest in Delhi.

10. Admittedly, the cases were at the pre-summoning stage and evidence had yet not been recorded by the learned Metropolitan Magistrate. On this point, this Court has already held in the case of M/s Religare Finvest Ltd. vs. State & Anr. (supra) that the Magistrate taking cognizance of an offence must not necessarily have the territorial jurisdiction to try the case. The observations made in this context in the aforesaid judgment are reproduced hereinbelow:

"24. As discussed above, the Magistrate taking cognizance of an offence must not necessarily have the territorial jurisdiction to try the case as well. Only when an enquiry or trial begins, does the jurisdictional aspect become relevant. In fact, after taking cognizance of the offence, the Magistrate may have to decide as to which court would have the jurisdiction to enquire into the case and such a situation can arise only during the post-cognizance stage. **At the pre-cognizance stage, the Magistrate has only to examine the averments, as set out in the complaint and not more, for *prima facie* arriving at a decision as to whether some of the acts essential for completing an offence under Section 138 of the Act were done in the territorial jurisdiction of that Court.** In the present case, having perused the complaint filed by the petitioner/complainant without ascertaining the correctness of the allegations made therein, *prima facie* it has to be held that a part of the cause of action has arisen in

Delhi and the same is not based solely on the issuance of a legal notice by the petitioner/complainant to the respondent/accused from Delhi, but some other acts done prior thereto, as set out in para (3) hereinabove.”

(emphasis added)

11. Furthermore, in light of the averments contained in the additional affidavit filed by the petitioner, the petitioner is justified in stating that since the matter was still at the pre-summoning stage, the petitioner-company was not heard by the learned MM and had it been afforded an opportunity to be heard, it could have filed such an additional affidavit along with the supporting documents in the trial court, so as to satisfy the court that it had the territorial jurisdiction to proceed with the complaint filed by the petitioner. Reliance can be placed on CrI. M.C. 50 of 2010 entitled Hartaj Singh v. Godrej Agrovat Ltd. & Anr., decided by a coordinate bench of this court on 31.05.2010, wherein at the pre-summoning stage, the complainant (respondent in that case) could not file an additional affidavit and supporting documents to make out a case of territorial jurisdiction. The Single Judge in that case held that if objections as to lack of territorial jurisdiction were raised at the pre-summoning stage, the complainant could have filed an additional affidavit by way of evidence along with supporting documents to take a categorical stand and justify its stand that the criminal courts in Delhi were vested with territorial jurisdiction to entertain the complaint.

12. In the instant cases, when the learned counsel for the petitioner has filed additional affidavits along with the relevant documents and has taken a clear and categorical stand with regard to additional acts relevant for the purpose of deciding the issue of territorial jurisdiction, this Court is inclined to agree with him that the averments contained in the complaint,

when read in conjunction with the additional affidavit, would *prima facie* show that there vests territorial jurisdiction in the court at New Delhi. It is further relevant to note that in case the respondent/accused enters appearance before the court below after being summoned, he shall still have a right to take a plea with regard to the aspect of territorial jurisdiction of the court by placing such material facts on record, as may be considered necessary at that stage. Learned Metropolitan Magistrate would then be in a position to ascertain the truth of the assertions made by the petitioner/complainant and could then arrive at a different conclusion.

13. As for the argument of the counsel for the petitioner that the learned MM had erred in returning the complaint, in the light of the status quo order passed by the Supreme Court in the SLP filed against the order of a Division Bench of this Court in Delhi High Court Legal Services Committee(supra), wherein directions were issued for the return of all those complaints, where cognizance had been taken by the trial court without being vested with territorial jurisdiction, this court is inclined to agree with the observation of the learned MM that such a status quo order would operate only against those complaints where cognizance had already been taken and not in cases, such as the one at hand, where cognizance had yet to be taken. Hence, the argument of the counsel for the petitioner in this regard is turned down.

14. In view of the above, the present petitions are allowed and the impugned orders are set aside. The cases are remanded back to the trial court with directions to proceed further and deal with the complaint of the petitioner filed under Section 138 of the Act in accordance with law. The

petitioner shall appear before the learned Metropolitan Magistrate on 04.04.2011 at 2.00 PM for further proceedings.

15. It is however made clear that while passing the present order, this Court has refrained from dealing with the arguments urged by the learned counsel for the petitioner on the issue of the core banking system adopted by banks in the country, which requires outstation cheques to be paid at par at all the branches of a drawee bank in any part of the country, which as per the petitioner, is an additional ground for conferring territorial jurisdiction on courts at Delhi, for the reason that, without going into the merits of the aforesaid argument, this Court finds that there exist other grounds which are considered sufficient to hold that, on a *prima facie* view, courts at Delhi would be vested with territorial jurisdiction to entertain the complaint filed by the petitioner under Section 138 of the Act.

A copy of this order be forwarded by the Registry forthwith to the trial court for information.

MARCH 14, 2011
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(HIMA KOHLI)
JUDGE